Research Proposal Form of the Thesis Entitled

A Critical Study of Legal Regime Governing Oppression of Minority Shareholders in India

Submitted for the Award of the Degree of

Doctor of Philosophy

By

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INTRODUCTION

The majority rule signifies that a numerical majority of the shareholders has the power to make decisions which are binding on all shareholders of that company. This rule was established in the famous case of *Foss v. Harbottle*.1 This rule is based on 2 concepts: **(1)** a company is a separate legal entity; and **(2)** a company cannot function effectively unless the will of the majority prevails.

However, the idea that every decision is based on the consent of majority of shareholders is true only in theory because the rule followed in 'one share one vote' and not 'one shareholder one vote'. In reality, the decision-making power ultimately lies in the hands of the group or person who has the largest number of shares.

It is a settled principle that courts and tribunals must not restrict the powers of the board of directors. There must not be interference of the judiciary in the day to day affairs of the company and the corporate democracy of the company in managing its affairs must be recognized.

A logical inference and corollary of the majority rule and the principle of judicial non-interference is that the minority shareholder is in a weaker position and is therefore, more susceptible to oppression and abuse by the majority shareholders. In order to ensure protection of the minority shareholders from actions which are not in the interests of the company but only serve to meet the selfish ends of the majority, various safeguards have been provided in the Companies Act 2013 to ensure protection of interests of the minority. Further, under certain circumstances such as commission of *ultra vires* or illegal act, infringement of personal rights of the shareholders, fraud being committed on the minority, unfair and prejudicial treatment meted out to the minority shareholders, a derivative action is permitted to be brought before the judicial authorities.

Squeeze out provisions in the Takeover Code are sometimes considered to be unjust and oppressive towards the minority shareholders considering they are forced to sell their shares at a price which is not acceptable to them. But since it is provided in the legislation, it is considered to be a legal way to acquiring shares of dissenting shareholders which is a problem that needs to be addressed.

SIGNIFICANCE OF THE STUDY & PROBLEM STATEMENT

There is a requirement of the majority rule to prevail in corporate democracy. However, this has to be balanced against the rights of majority shareholders. Remedies which are available to shareholders for oppression and mismanagement are important to safeguard the rights of minority shareholders against the abuse of power by those in majority. There has been an age of concept of the majority rule which has now been done away by the courts in India and considering the majority shareholders are also been oppressed by the minority shareholders, this paradigm shift is a fairly new concept which will be discussed at length and considering this is a new concept, not many scholars have touched upon this topic yet. The requirement to reach a fine balance between ensuring minority protection and non-interference by courts and the executive to allow corporate democracy of the company in managing its affairs, has been an important part of corporate governance since decades. Steps have been taken under the Companies Act 2013 to fill certain lacunae which were existing in Companies Act 1956. However, certain concerns yet exist.

RESEARCH OBJECTIVES

This study aims to:

1. Evaluate the provisions of the Companies Act 2013 related to oppression and mismanagement of shareholders and related party transactions
2. Analyze judicial approach related to oppression of minority shareholders and reasoning behind the same with special reference to the Tata Mistry feud
3. Discuss the provisions of Takeover Code related to squeezing out of dissenting shareholders and exit option
4. Analyze the problems faced by the shareholders and suggest possible solutions for the same.

RESEARCH QUESTIONS

1. Whether the Companies Act 2013 and Takeover code provisions are adequate to protect the rights of shareholders?
2. Whether the provisions are giving more than required protection to the minority shareholder and thereby giving them an undue advantage?
3. Whether the squeezing out provisions and related party transaction bar ensure that there is no unfair and unjust treatment to minority shareholders?
4. What were the issues that were raised in the Tata- Mistry feud with respect to oppression of minority shareholders and how was this concern addressed?
5. What are the lacunas in the existing legal regimen in protecting minority shareholders?

HYPOTHESIS

1. Majority shareholders are oppressed because of the lacunas in the legal regime
2. Low enforcement of laws is the reason for oppression of minority shareholders in a company
3. Oppression allegations by Cyrus Mistry has raised concerns about protection of minority shareholders in the corporate structure
4. After the introduction of the Take Over Code, the oppressive behavior to squeeze out minorities have increased using alternative methods

RESEARCH METHODOLOGY

The present study is doctrinal in nature. It involves historical, descriptive and analytical research. It is will be based on primary sources such as legislations and case laws. It will also make use of secondary sources such as books, articles, reports, etc. The study is based on the APA citation style

SCOPE OF STUDY

The study revolves around the changes that have taken place in corporate governance norms to ensure enhanced minority shareholders' protection, in India. It does not aim to focus on one aspect of minority shareholders' protection, rather intends to throw light and analysis on the important aspects surrounding it, in the Indian scenario. It will be analytical in regard to understanding the reasons which led to these changes and the concerns that still exist. Further, the focus of the study will be on the remedies available to minorities and the safeguards provided in the legislative framework to ensure minority shareholders' protection. The study also takes into account measures taken by the legislature and the judiciary in order to ensure a balance between independence of the company in handling its day to day affairs and protection of minority shareholders from abuse of dominant power by the majority shareholders and directors.

LITERATURE REVIEW

1. Law & Practice Relating to Oppression & Mismanagement[1]

The book discusses in detail, the law relating to oppression and mismanagement under the 2013 Act. The principles pertaining to majority rule, minority protection, remedies available to minority shareholders, directors' fiduciary duties towards shareholders as well as statutory safeguards against the abuse of majority rule have been discussed. The book also discusses the safeguards provided under the previous company laws in brief. The landmarks judgments passed by the Supreme Court and various High Courts on oppression and mismanagement, under the 1956 Act have also been discussed. This book is being relied upon to analyze the changes that have taken place, in the approach of courts and law makers, whilst ensuring protection of minority shareholders from oppression and mismanagement.

2. Guide to the Companies Act[2]

[1] Dr. K.R. Chandratre, *Law & Practice Relating to Oppression & Mismanagement* (Bhart Law House, 2016)
[2] A Ramaiya, *Guide to the Companies Act* (LexisNexis, 2015)

The Guide is a series of books discussing the various provisions of the 2013 Act. The commentary highlights the historical aspects of the various provisions as well as the corresponding provisions in the 1956 Act. The interpretation accorded to various important terms, the important judicial dicta, the law in other leading jurisdictions and the existing lacunae have also been highlighted.

The books discusses, in detail, the statutory provisions under the Companies Act, 2013 Act for safeguarding the minority shareholders. Relevant chapters of the books are relied upon to develop a basic understanding of the legislative and judicial approach as well as the decision taken by the legislature and judiciary for ensuring minority shareholders'' protection and reduce the abuse and abuse of the majority rule while ensuring corporate democracy and governance .

3. Law & Practices Relating to Oppression & Mismanagement[3]

Various listed companies in India are held and controlled by families or the state or certain company groups. This leads to concentration of ownership in the hands of few and therefore, increases the scope of Related Party Transactions ("**RPT(s**)"). Due to widespread instances of RPTs, there is a greater chance of abuse of minority shareholders if such transactions are not conducted at arms-length. In the backdrop of this, it becomes important to assess if the safeguards provided under the legislations are effective to ensure protection of minority shareholders. It highlights various challenges faced due to RPTs and had suggested various legal and regulatory changes to tackle a possible abuse. This report is therefore, being relied upon to analyze minority shareholders' protection in relation to abuse of RPTs.

4. Minority Shareholders: Law, Practice and Procedure[4]

In this book, author has briefly discussed certain measures that have been taken and that could be taken to ensure minority protection. Disclosure requirements, regulation of RPTs, appointment of independent directors by minority shareholders in some jurisdictions, regulation of affirmative rights given to certain investors, requirement of

[3] Dr. K.R. Chandratre *Law & Practices Relating to Oppression & Mismanagement* (Bharat, 2017)
[4]Victor Joffe QC, *Minority Shareholders: Law, Practice and Procedure (*OUP UK; 5th edition)

consent of minority shareholders while deciding managerial remuneration and fiduciary responsibility of controlling shareholders have been briefly discussed. The book is being relied to analyze the view taken by the securities regulator, the proposals that have been incorporated in the legislative framework.

5. Emerging Trends in Corporate Governance – Legal Issues and Challenges in India[5]

This book is a compilation of various chapters written by different authors on different aspects of Corporate Governance with regards to the 2013 Act. The book is relied upon for this study for a preliminary understanding of the relevant aspects of corporate governance as well as to India and their effectiveness.

6. A Practical Guide to Corporate Governance[6]

The book discusses various aspects of corporate governance norms and practices in the jurisdictions of United Kingdom, United States of America and European Union. It will be referred to for analyzing the norms in these jurisdictions vis-à-vis those in India. The same will be done to analyze what changes could be made in the Indian system to make the system more transparent and effective.

TENTITIVE SCHEME OF CHAPTERS

1. **An Introduction to Oppression of Minority Shareholders**

   This chapter will introduce the relevant aspects pertaining to the study and will indicate intention behind and relevance of undertaking this study. The statement of problem, aims and objectives, research questions, research methodology, scope and limitations of the study will be highlighted in this chapter.

[5] B.P. Sehgal, *Emerging Trends in Corporate Governance – Legal Issues and Challenges in India* (Satyam Law International, Delhi 2015).
[6] Richard Smerdon, *A Practical Guide to Corporate Governance* (Sweet & Maxwell, London 2010).

2. **Analyzing Protection of Minority Shareholders Under the Companies Act 2013**

   This chapter shall discuss the laws pertaining to oppression of shareholders under the Companies Act 2013 along with its predecessor, Companies Act, 1956 discussing the various aspects of the provisions and judicial interpretation under this legislation

3. **Squeeze-Out Provisions and Related Party Transactions as Methods Oppression of Shareholders**

   In today's corporate world, especially in India, ownership is concentrated and there is an existence of company group in case of listed companies[7]. In India, most of the companies are closely held family-owned companies. Therefore, the framework of corporate governance in India should give more emphasis to regulate connected transactions that involve promotes and related parties. The provisions pertaining to compulsory acquisition of shares by dissenting shareholders, scheme of arrangement and reduction of capital allow the majority shareholders to undertake transactions forcibly by acquiring the shares held by minorities. This chapter will analyze whether the safeguards provided for minority shareholders' protection when a 'squeeze out' takes place are adequate or whether more steps need to be taken in this regard

4. **Strategic Discord between Tata-Mistry**

   This chapter will thoroughly analyze the Tata Mistry feud including what went on behind the scenes and in board meetings to strategically oppression a power personality like Mr. Mistry along with facts and contentions presented to all the judicial bodies before the matter was disposed

[7] OECD, 'Improving Corporate Governance in India – Related Party Transactions and Minority Shareholders Protection' (2014) ISSN 2077-6535 1, 9.

5. Conclusion and Recommendations

This chapter will provide concluding remarks on the aspects covered in this study and will provide comments and recommendations to improve the existing lacunae and concerns

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